

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses, so as to change the definitions of rape and aggravated sodomy; to provide for increased punishment for certain persons convicted of rape or aggravated sodomy involving children 12 years of age or younger; to amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of punishment, so as to provide for increased punishment for certain persons convicted of rape or aggravated sodomy involving children 12 years of age or younger; to provide for applicability; to provide for legislative intent; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 6 of Title 16 of the Official Code of Georgia Annotated, relating to sexual offenses, is amended by striking Code Section 16-6-1, relating to rape, and inserting in lieu thereof a new Code Section 16-6-1 to read as follows:

"16-6-1.

(a) A person commits the offense of rape when he has carnal knowledge of:

(1) A female forcibly and against her will; or

(2) A female who is ~~less than ten~~ 12 years of age or younger.

Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape. The fact that the defendant was unaware of or mistaken concerning the age of the person raped shall not be a defense to such crime.

(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by imprisonment for not less than ten nor more than 20 years; provided, however, that a person who is 18 years of age or older who is convicted of the offense of rape of a person 12 years of age or younger shall be punished by imprisonment for life without parole. Any person convicted under this Code

1 section shall, in addition, be subject to the sentencing and punishment provisions of Code
2 Sections 17-10-6.1 and 17-10-7.

3 (c) When evidence relating to an allegation of rape is collected in the course of a medical
4 examination of the person who is the victim of the alleged crime, the law enforcement
5 agency investigating the alleged crime shall be responsible for the cost of the medical
6 examination to the extent that expense is incurred for the limited purpose of collecting
7 evidence."

8 SECTION 2.

9 Said chapter is further amended by striking Code Section 16-6-2, relating to sodomy and
10 aggravated sodomy, and inserting in lieu thereof a new Code Section 16-6-2 to read as
11 follows:

12 "16-6-2.

13 (a) A person commits the offense of sodomy when he or she performs or submits to any
14 sexual act involving the sex organs of one person and the mouth or anus of another. A
15 person commits the offense of aggravated sodomy when he or she commits sodomy with
16 force and against the will of the other person or when he or she commits sodomy with a
17 person who is ~~less than ten~~ 12 years of age or younger. The fact that the person allegedly
18 sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated
19 sodomy. The fact that the defendant was unaware of or mistaken concerning the age of the
20 person against whom the offense of aggravated sodomy was committed shall not be a
21 defense to such crime.

22 (b) A person convicted of the offense of sodomy shall be punished by imprisonment for
23 not less than one nor more than 20 years. A person convicted of the offense of aggravated
24 sodomy shall be punished by imprisonment for life or by imprisonment for not less than
25 ten nor more than 30 years; provided, however, that a person who is 18 years of age or
26 older who is convicted of the offense of aggravated sodomy of a person 12 years of age or
27 younger shall be punished by imprisonment for life without parole. Any person convicted
28 under this Code section of the offense of aggravated sodomy shall, in addition, be subject
29 to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

30 (c) When evidence relating to an allegation of aggravated sodomy is collected in the
31 course of a medical examination of the person who is the victim of the alleged crime, the
32 law enforcement agency investigating the alleged crime shall be financially responsible for
33 the cost of the medical examination to the extent that expense is incurred for the limited
34 purpose of collecting evidence."

SECTION 3.

Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of punishment, is amended by striking Code Section 17-10-6.1, relating to punishment for serious violent offenders, and inserting in lieu thereof a new Code Section 17-10-6.1 to read as follows:

"17-10-6.1.

(a) As used in this Code section, the term 'serious violent felony' means:

- (1) Murder or felony murder, as defined in Code Section 16-5-1;
- (2) Armed robbery, as defined in Code Section 16-8-41;
- (3) Kidnapping, as defined in Code Section 16-5-40;
- (4) Rape, as defined in Code Section 16-6-1;
- (5) Aggravated child molestation, as defined in Code Section 16-6-4;
- (6) Aggravated sodomy, as defined in Code Section 16-6-2; or
- (7) Aggravated sexual battery, as defined in Code Section 16-6-22.2.

(b) Notwithstanding any other provisions of law to the contrary, any person convicted of a serious violent felony as defined in paragraphs (2) through (7) of subsection (a) of this Code section shall be sentenced to a mandatory minimum term of imprisonment of ten years and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and shall not be reduced by any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles; provided, however, that a person who is 18 years of age or older who is convicted of a serious violent felony as defined in paragraphs (4) and (6) of subsection (a) of this Code section where the victim of such offense was 12 years of age or younger shall be sentenced to imprisonment for life without parole and no portion of such sentence shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and shall not be reduced by any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles. No person convicted of a serious violent felony as defined in subsection (a) of this Code section shall be sentenced as a first offender pursuant to Article 3 of Chapter 8 of Title 42, relating to probation for first offenders, or any other provision of Georgia law relating to the sentencing of first offenders. The State of Georgia shall have the right to appeal any sentence which is imposed by the superior court which does not conform to the provisions of this subsection in the same manner as is provided for other appeals by the state in accordance with Chapter 7 of Title 5, relating to appeals or certiorari by the state.

(c)(1) Except as otherwise provided in subsection (c) of Code Section 42-9-39, for a first conviction of a serious violent felony in which the defendant has been sentenced to life imprisonment, that person shall not be eligible for any form of parole or early release

1 administered by the State Board of Pardons and Paroles until that person has served a
2 minimum of 14 years in prison. The minimum term of imprisonment shall not be reduced
3 by any earned time, early release, work release, leave, or other sentence-reducing
4 measures under programs administered by the Department of Corrections.

5 (2) For a first conviction of a serious violent felony in which the defendant has been
6 sentenced to death but the sentence of death has been commuted to life imprisonment,
7 that person shall not be eligible for any form of parole or early release administered by
8 the State Board of Pardons and Paroles until that person has served a minimum of 25
9 years in prison. The minimum term of imprisonment shall not be reduced by any earned
10 time, early release, work release, leave, or other sentence-reducing measures under
11 programs administered by the Department of Corrections.

12 (3) Any sentence imposed for the first conviction of any serious violent felony other than
13 a sentence of life imprisonment or life without parole or death shall be served in its
14 entirety as imposed by the sentencing court and shall not be reduced by any form of
15 parole or early release administered by the State Board of Pardons and Paroles or by any
16 earned time, early release, work release, leave, or other sentence-reducing measures under
17 programs administered by the Department of Corrections, the effect of which would be
18 to reduce the period of incarceration ordered by the sentencing court.

19 (d) For purposes of this Code section, a first conviction of any serious violent felony
20 means that the person has never been convicted of a serious violent felony under the laws
21 of this state or of an offense under the laws of any other state or of the United States, which
22 offense if committed in this state would be a serious violent felony. Conviction of two or
23 more crimes charged on separate counts of one indictment or accusation, or in two or more
24 indictments or accusations consolidated for trial, shall be deemed to be only one
25 conviction."

26 **SECTION 4.**

27 This Act shall be applicable to all offenses committed on or after the effective date of this
28 Act. It is the intent of the General Assembly that the provisions of this Act shall not affect
29 any prosecutions for offenses committed prior to the effective date of this Act and such
30 offenses may continue to be prosecuted.

31 **SECTION 5.**

32 All laws and parts of laws in conflict with this Act are repealed.